

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

GIGAMON, INC.,

Plaintiff,

v.

APCON, INC.,

Defendant.

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CIVIL ACTION NO. 2:19-CV-00300-JRG

JURY VERDICT FORM

In answering the following questions and completing this Verdict Form, you are to follow all the instructions I have given you in the Court's Final Jury Instructions. Your answers to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in detail in the Final Jury Instructions. You should refer to and consider the Final Jury Instructions as you answer the questions in this Verdict Form.

As used herein, the following terms have the following meanings:

- “Gigamon” refers to Plaintiff Gigamon, Inc.
- “Apcon” refers to Defendant Apcon, Inc.
- The “’862 Patent” refers to U.S. Patent No. 8,570,862.
- The “’466 Patent” refers to U.S. Patent No. 8,824,466.
- The “’557 Patent” refers to U.S. Patent No. 8,873,557.
- The “’656 Patent” refers to U.S. Patent No. 9,077,656.
- The “’049 Patent” refers to U.S. Patent No. 9,769,049.
- The “Patents-In-Suit” refers collectively to the ’862, ’466, ’557, ’656, and ’049 Patents.
- The “Asserted Claims” refers collectively to:
 - Claims 1 and 8 of the ’862 Patent;
 - Claim 12 of the ’466 Patent;
 - Claim 10 of the ’557 Patent;
 - Claim 14 of the ’656 Patent; and
 - Claim 16 of the ’049 Patent.

**IT IS VERY IMPORTANT THAT YOU FOLLOW THE
INSTRUCTIONS PROVIDED IN THIS VERDICT FORM.**

**READ THEM CAREFULLY AND
ENSURE YOUR VERDICT COMPLIES WITH THEM.**

QUESTION NO. 1:

Did Gigamon prove by a preponderance of the evidence that Apcon infringed
ANY of the Asserted Claims?

Yes: _____ No: X

QUESTION NO. 2:

Did Apcon prove by clear and convincing evidence that any of the following
Asserted Claims are invalid?

Check either “Yes” or “No” for each Asserted Claim listed below:

Claim 1 of the '862 Patent	Yes: <u>X</u>	No: _____
Claim 8 of the '862 Patent	Yes: <u>X</u>	No: _____
Claim 12 of the '466 Patent	Yes: <u>X</u>	No: _____
Claim 10 of the '557 Patent	Yes: <u>X</u>	No: _____
Claim 14 of the '656 Patent	Yes: <u>X</u>	No: _____
Claim 16 of the '049 Patent	Yes: <u>X</u>	No: _____

If you answered “NO” to Question No. 1, OR “YES” to ALL Asserted Claims in Question No. 2, then DO NOT answer Question No. 3.

Answer Question No. 3 ONLY as to any Asserted Claim that you have found BOTH to be infringed AND not invalid.

QUESTION NO. 3

Did Gigamon prove by a preponderance of the evidence that Apcon willfully infringed **ANY** of the Asserted Claims that you found were infringed?

Yes: _____ No: _____

If you answered NO to Question No. 1 OR “YES” to ALL Asserted Claims in Question No. 2, then DO NOT answer Question Nos. 4a, 4b, or 4c.

Answer Question Nos. 4a, 4b, and 4c ONLY as to any Asserted Claim that you have found BOTH to be infringed AND not invalid.

QUESTION NO. 4a:

What sum of money, if any, has Gigamon proven by a preponderance of the evidence that it is entitled to as **lost profits**?

Answer in United States Dollars and Cents, if any:

\$ _____

If you awarded lost profits in Question 4a, you must also answer Question 4b as to any acts of infringement for which you have not already awarded lost profits.

If you did NOT award any lost profits in Question 4a, you must answer Question 4b as to ALL acts of infringement.

QUESTION NO. 4b:

What sum of money, if any, paid now in cash, has Gigamon proven by a preponderance of the evidence would compensate Gigamon as a **reasonable royalty** for its damages resulting from infringement?

Answer in United States Dollars and Cents, if any:

\$ _____

QUESTION NO. 4c:

Is the reasonable royalty amount you awarded in Question 4b (i) a lump-sum representing damages for past and future infringement; or (ii) a running royalty?

Check ONE of the following:

_____ Lump Sum

- OR -

_____ Running Royalty

FINAL PAGE OF JURY VERDICT FORM

You have now reached the end of the Verdict Form and should review it to ensure it accurately reflects your **unanimous** determinations. The Jury Foreperson should then sign and date the Verdict Form in the spaces below. Once this is done, notify the Court Security Officer that you have reached a verdict. The Jury Foreperson should keep the Verdict Form and bring it when the jury is brought back into the courtroom.

Signed this 23 day of April, 2021.

Jury Foreperson